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[APPELLATE CRIMINAL JURISDICTION]

McELWAINE, C.J.

February 27, 1941.

NARAYANASAMY vs. THE KING.

[SINGAPORE MAGISTRATE'S APPEAL No. 3 of 1941]

Oaths Ordinance (Cap. 15) S. 11 sub-s. 2—Witness paid for giving false evidence—whether order appealable or not.

The appellant was a witness in a prosecution and at the close of the case the magistrate called upon the appellant to shew cause why he should not be punished for contempt of court committed in **facie curiae** by giving false evidence. In the result the witness was convicted and fined $50 or in default six weeks imprisonment. From this conviction and sentence he appealed.

Held, that in such a case an appeal does not lie and the Supreme Court has no power to revise the conviction or sentence.

Cases referred to:—

(1) *In re Puteh,* 11 S.S.L.R. 78.

(2) *Mohamed v. Rex,* Appeal No. 29 of 1907 (unreported).

(3) *Lee Yew v. Public Prosecutor,* 5 F.M.S.L.R. 77.

(4) *Kasi Chetty and Palaniappa Chetty v. P.P.,* 6 F.M.S.L.R. 155.

MAGISTRATE'S APPEAL.

P. C. Nathan for appellant.

C. H. Koh (D.P.P.) for the Crown.

The facts and arguments sufficiently appear from the judgment.

McElwaine, C.J.—The appellant was the principal Crown witness in a prosecution of one Ramu on a charge of theft from a dwelling. At the close of the case the Magistrate called upon the appellant under s. 11 sub-s. 2 of the Oaths Ordinance (Cap. 15) to shew cause why he should not be punished for contempt of Court in giving false evidence. He was fined $50 and in default six weeks imprisonment.

A preliminary objection was raised that an appeal does not lie from an order imposing summary punishment under s. 11 of the Oaths Ordinance.

This point was decided by Braddell, J. in 1908 in *In re Puteh*[1] who held that as no right of appeal was given by the Ordinance an order passed under its provisions was not appealable and he held that the whole of the provisions of the section were outside the scope of the Criminal Procedure Ordinance 1900.

Mr. Nathan for the appellant referred to section 302 of the Criminal Procedure Code (Cap. 21) and contended that this is a criminal case or matter. I see no difference in substance between s. 302 of the present Criminal Procedure Code and s. 293 of the Code of 1900.

I am inclined to think that contempt in *facie curiae* by giving false evidence is a criminal matter, but even if it is it may well be that s. 302 is not intended to cover such a case as the present. In addition to the inference Braddell, J. found in the provision that summary fines must be reported to the Attorney-General, which can only be with a view to executive action which would hardly be necessary if an appeal lay, I would refer to sections 379—385 dealing with other criminal offences which may be dealt with as contempts when committed in *facie curiae.* An appeal is given by s. 384 which would not be necessary if the Legislature had considered the matter covered by s. 302.

In *Mohamed v. Rex*[2] the appellant gave evidence at a trial before the Supreme Court in a suit brought against him by one De Silva. The Supreme Court made the following order:

> "Whereas M.C.S. Mohamed the defendant abovenamed in giving evidence in this case gave in the opinion of the Court false evidence within the meaning of section 191 of the Penal Code. This Court doth under the provisions of section 12 of Ordinance V of 1890 (now Chapter 15 Section 11) order that the said M.C.S. Mohamed do stand committed summarily for trial before a Bench Court there and then to answer a charge of having given false evidence in a judicial proceeding an offence punishable under section 193 of the Penal Code."

The Bench Court tried and convicted the appellant and sentenced him to two years rigorous imprisonment.

The appeal was heard by a full Court and from the written judgments it appears that the point of the appeal was that the Bench Court had no jurisdiction because no complaint had been laid as required by s. 135 sub-s. 1 (b) of the Criminal Procedure Code 1900 (See s. 139 sub-s. 1 (b) of the present Code) which read:

> "No Court shall take cognizance—
>
> (b) of any offence punishable under section 193, 194, 195, 196, 199, 200, 205, 206, 207, 208, 209, 210, 211 or 228 of the same Code except with the previous sanction of the Public Prosecutor or when such offence is committed in or in relation to any proceeding in any Court on the complaint of such Court."

The Court held that s. 135 sub-s. 1 (b) of the Criminal Procedure Code did not apply when a person was summarily committed for trial under s. 11 of the Oaths Ordinance.

In *Lee Yew v. Public Prosecutor*[3] Sproule Acting C.J.C. held that there was no appeal from and no revision of a summary sentence by a Magistrate under s. 14 of the F.M.S. Affirmations Enactment then in force (see Voules Vol. I at p. 84) save as in that section provided and that the provisions of the Criminal Procedure Code did not apply to such sentences. Part of the argument in favour of an appeal lying was founded on the absence from the section (as it then stood) of the words "as for contempt of Court" which appear in the Colony Ordinance. "In my opinion" said Sproule Acting C.J.C., "the Affirmations Enactment stands enclosed within its own four walls and confers a separate jurisdiction upon the Courts with separate machinery for summary sentence without trial and summary revision by the Supreme Court, all of which are entirely outside the scope of the Criminal Procedure Code."

In *Kasi Chetty and Palaniappa Chetty v. P.P.*[4] Elphinstone, C.J. held that an appeal lay from a sentence of imprisonment imposed under s. 14 of the Affirmations Enactment of 1925 which uses the words "as for contempt" and he declined to follow *Lee Yew v. P.P. supra.*

The learned Chief Justice seems to have founded himself on the fact that the Affirmations Enactment of 1925 which was passed subsequently to the Criminal Procedure Code of 1903 did not expressly repeal or amend s. 258 of the latter Code (See s. 302 of the Colony Code). The Affirmations Enactment with which Sproule Acting C.J.C. had to deal was passed in 1898, prior to the Criminal Procedure Code.

It is unnecessary to express any opinion as to whether a statute "to repeal and re-enact" an earlier statute must, when the provisions are the same, be deemed to be subsequent in point of time to an intermediate statute.

In any case the Colony Oaths Ordinance was passed long before the Criminal Procedure Code and the latter does not expressly repeal or amend s. 11 of the former.

Under the F.M.S. Enactment as it stood at the date of each of the above cases there was provision that a Magistrate exercising the summary power concerned must make a full report to the Supreme Court which was expressly given power to confirm the sentence or to quash it or to remit the punishment either in whole or part.

These provisions imply a power of revision and this special power would appear unnecessary if the General Revision Sections of the F.M.S. Criminal Procedure Code applied.

As Braddell, J. pointed out in *In Re Puteh, supra* in this Colony the Magistrate reports not to the Court but to the Attorney-General.

I follow *In re Puteh* and hold that an appeal does not lie and for the same reasons I have no power to revise.

Appeal dismissed.

[ORIGINAL CIVIL JURISDICTION]

McELWAINE, C.J.

April 3, 1941.

IN THE MATTER OF SECTION 11 (a) (ii) OF THE COURTS ORDINANCE (CAP. 10) AND IN THE MATTER OF APPLICATION No. 578 OF 1940 TO THE RENT ASSESSMENT BOARD EX PARTE TAN SWEE ENG.

Increase of Rent (Restriction) Ordinance 1939—Sec. 7 sub-s. 5 Board's powers of re-hearing—Proceedings under s. 8.

The powers of re-hearing given to the Board by s. 7 sub-s. 5 of the Increase of Rent (Restriction) Ordinance only apply to applications under s. 7 of that Ordinance and not to applications under s. 8. A mandamus to the Board calling on them to re-hear an application made under s. 8 was refused.

Cases referred to:—

(1) *In re Rent Restriction Ordinance 1921 (Melanie Lee's case)* 1933 S.S.L.R. 536; (1932) M.L.J. 180 followed.

(2) *Barras v. Aberdeen Steam Trawling and Fishing Co.* 1933 A.C. 412.

ORIGINATING MOTION.

Roland St. John Braddell for applicant.
E. R. Koek for Chan Wing.

The facts and arguments sufficiently appear from the Judgment.

Cur. Adv. Vult.

McElwaine, C.J.—The applicant Tan Swee Eng was lessee of the Empire Cinema Hall, one Chan Wing being the landlord.